

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 317 be amended to read as follows:

- 1 Page 10, between lines 39 and 40, begin a new paragraph and insert:
2 "SECTION 7. IC 36-4-3-2.1, AS AMENDED BY P.L.49-2000,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2001]: Sec. 2.1. (a) A municipality may adopt an ordinance
5 under this chapter only after the legislative body has held a public
6 hearing concerning the proposed annexation. The municipality shall
7 hold the public hearing not earlier than sixty (60) days after the date the
8 ordinance is introduced. All interested parties must have the
9 opportunity to testify as to the proposed annexation. Except as provided
10 in ~~subsection~~ **subsections (c) and (d)**, notice of the hearing shall be:
11 (1) published in accordance with IC 5-3-1 except that the notice
12 shall be published at least sixty (60) days before the hearing; and
13 (2) mailed as set forth in section 2.2 of this chapter, if section 2.2
14 of this chapter applies to the annexation.
15 (b) A municipality may adopt an ordinance under this chapter not
16 earlier than thirty (30) days or not later than sixty (60) days after the
17 legislative body has held the public hearing under subsection (a).
18 (c) This subsection applies to an annexation under section 3 or 4 of
19 this chapter in which all property owners within the area to be annexed
20 provide written consent to the annexation. Notice of the hearing shall
21 be:
22 (1) published one (1) time at least twenty (20) days before the
23 hearing in accordance with IC 5-3-1; and
24 (2) mailed as set forth in section 2.2 of this chapter.

1 **(d) This subsection applies to an annexation under section 5 of**
 2 **this chapter in which the owners of all the property within a**
 3 **territory petition the municipality for the annexation of the**
 4 **territory. The municipality shall give notice of the hearing at least**
 5 **forty-eight (48) hours before the hearing in accordance with**
 6 **IC 5-14-1.5-5. The municipality is not required to provide notice by**
 7 **mail as set forth in section 2.2 of this chapter.**

8 SECTION 8. IC 36-4-3-2.2, AS AMENDED BY P.L.49-2000,
 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2001]: Sec. 2.2. (a) This section does not apply to an
 11 annexation under section 4(a)(2), 4(a)(3), 4(b), 4(h), or 4.1 of this
 12 chapter **or an annexation described in section 2.1(d) of this chapter.**

13 (b) Before a municipality may annex territory, the municipality shall
 14 provide written notice of the hearing required under section 2.1 of this
 15 chapter. Except as provided in subsection (e), the notice must be sent
 16 by certified mail at least sixty (60) days before the date of the hearing
 17 to each owner of real property, as shown on the county auditor's current
 18 tax list, whose real property is located within the territory proposed to
 19 be annexed.

20 (c) The notice required by this section must include the following:

21 (1) A legal description of the real property proposed to be
 22 annexed.

23 (2) The date, time, location, and subject of the hearing.

24 (3) A map showing the current municipal boundaries and the
 25 proposed municipal boundaries.

26 (4) Current zoning classifications for the area proposed to be
 27 annexed and any proposed zoning changes for the area proposed
 28 to be annexed.

29 (5) A detailed summary of the fiscal plan described in section 13
 30 of this chapter.

31 (6) The location where the public may inspect and copy the fiscal
 32 plan.

33 (7) A statement that the municipality will provide a copy of the
 34 fiscal plan after the fiscal plan is adopted immediately to any
 35 landowner in the annexed territory who requests a copy.

36 (8) The name and telephone number of a representative of the
 37 municipality who may be contacted for further information.

38 (d) If the municipality complies with this section, the notice is not
 39 invalidated if the owner does not receive the notice.

40 (e) This subsection applies to an annexation under section 3 or 4 of
 41 this chapter in which all property owners within the area to be annexed
 42 provide written consent to the annexation. The written notice described
 43 in this section must be sent by certified mail not later than twenty (20)
 44 days before the date of the hearing to each owner of real property, as
 45 shown on the county auditor's current tax list, whose real property is
 46 located within the territory proposed to be annexed.

SECTION 9. IC 36-4-3-5 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) If the owners of land located
 outside of but contiguous to a municipality want to have territory
 containing that land annexed to the municipality, they may file with the
 legislative body of the municipality a petition:

(1) signed by at least:

(A) fifty-one percent (51%) of the owners of land in the
 territory sought to be annexed; or

(B) the owners of seventy-five percent (75%) of the total
 assessed value of the land for property tax purposes; and

(2) requesting an ordinance annexing the area described in the
 petition.

**(b) If the owners of all the property within the territory sought
 to be annexed sign the petition, a remonstrance may not be filed
 under section 11 of this chapter. However, an appeal may be filed
 under section 15.5 of this chapter.**

(c) If the legislative body fails to ~~pass~~ **introduce** the ordinance
 within sixty (60) days after the date of filing of a petition under
 subsection (a), the petitioners may file a duplicate copy of the petition
 in the circuit or superior court of a county in which the territory is
 located, and shall include a written statement of why the annexation
 should take place. Notice of the proceedings, in the form of a
 summons, shall be served on the municipality named in the petition.
 The municipality is the defendant in the cause and shall appear and
 answer.

~~(c)~~ **(d)** The court shall hear and determine the petition without a
 jury, and shall order the proposed annexation to take place only if the
 evidence introduced by the parties establishes that:

(1) essential municipal services and facilities are not available to
 the residents of the territory sought to be annexed;

(2) the municipality is physically and financially able to provide
 municipal services to the territory sought to be annexed;

(3) the population density of the territory sought to be annexed is
 at least three (3) persons per acre; and

(4) the territory sought to be annexed is contiguous to the
 municipality.

If the evidence does not establish all four (4) of the preceding factors,
 the court shall deny the petition and dismiss the proceeding.

~~(d)~~ **(e)** This subsection does not apply to a town that has abolished
 town legislative body districts under IC 36-5-2-4.1. An ordinance
 adopted under this section must assign the territory annexed by the
 ordinance to at least one (1) municipal legislative body district.

~~(e)~~ **(f)** In a county having a population of more than two hundred
 thousand (200,000) but less than three hundred thousand (300,000), the
 court shall hear and determine the petition without a jury and shall
 order the proposed annexation to take place only if the evidence

1 introduced by the parties establishes that:

- 2 (1) essential city services and facilities are or can be made
- 3 available to the residents of the territory sought to be annexed;
- 4 (2) the city is physically and financially able to provide city
- 5 services to the territory sought to be annexed; and
- 6 (3) the territory sought to be annexed is contiguous to the city.

7 If the evidence does not establish all three (3) of the preceding factors,
8 the court shall deny the petition and dismiss the proceeding.

9 SECTION 10. IC 36-4-3-7 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) After an
11 ordinance is adopted under section 3, 4, or 5 of this chapter, it must be
12 published in the manner prescribed by IC 5-3-1. Except as provided in
13 subsection (b), ~~or (c)~~, **or (f)**, in the absence of remonstrance and appeal
14 under section 11 or 15.5 of this chapter, the ordinance takes effect at
15 least sixty (60) days after its publication and upon the filing required
16 by section 22(a) of this chapter.

17 (b) An ordinance described in subsection (d) or adopted under
18 section 3, 4, or 5 of this chapter may not take effect during the year
19 preceding a year in which a federal decennial census is conducted. An
20 ordinance that would otherwise take effect during the year preceding
21 a year in which a federal decennial census is conducted takes effect
22 January 2 of the year in which a federal decennial census is conducted.

23 (c) Subsections (d) and (e) apply to fire protection districts that are
24 established after June 14, 1987.

25 (d) Except as provided in subsection (b), whenever a municipality
26 annexes territory, all or part of which lies within a fire protection
27 district (IC 36-8-11), the annexation ordinance (in the absence of
28 remonstrance and appeal under section 11 or 15.5 of this chapter) takes
29 effect the second January 1 that follows the date the ordinance is
30 adopted and upon the filing required by section 22(a) of this chapter.
31 The municipality shall:

- 32 (1) provide fire protection to that territory beginning the date the
- 33 ordinance is effective; and
- 34 (2) send written notice to the fire protection district of the date the
- 35 municipality will begin to provide fire protection to the annexed
- 36 territory within ten (10) days of the date the ordinance is adopted.

37 (e) If the fire protection district from which a municipality annexes
38 territory under subsection (d) is indebted or has outstanding unpaid
39 bonds or other obligations at the time the annexation is effective, the
40 municipality is liable for and shall pay that indebtedness in the same
41 ratio as the assessed valuation of the property in the annexed territory
42 (that is part of the fire protection district) bears to the assessed
43 valuation of all property in the fire protection district, as shown by the
44 most recent assessment for taxation before the annexation, unless the
45 assessed property within the municipality is already liable for the
46 indebtedness. The annexing municipality shall pay its indebtedness

under this section to the board of fire trustees. If the indebtedness consists of outstanding unpaid bonds or notes of the fire protection district, the payments to the board of fire trustees shall be made as the principal or interest on the bonds or notes becomes due.

(f) This subsection applies to an annexation initiated by property owners under section 5 of this chapter in which the owners of all the property within the territory sought to be annexed petition the municipality for the annexation of the territory. Subject to subsections (b) and (d), and in the absence of an appeal under section 15.5 of this chapter, an annexation ordinance takes effect at least thirty (30) days after its publication and upon the filing required by section 22(a) of this chapter.

SECTION 11. IC 36-4-3-11, AS AMENDED BY P.L.217-1999, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) **Except as provided in section 5(b) of this chapter and subsection (d),** whenever territory is annexed by a municipality under this chapter, the annexation may be appealed by filing with the circuit or superior court of a county in which the annexed territory is located a written remonstrance signed by:

(1) if the annexation is by a city in a county with a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000):

(A) a majority of the owners of land in the annexed territory; or

(B) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory; or

(2) if the annexation is by a municipality that is not described in subdivision (1):

(A) at least sixty-five percent (65%) of the owners of land in the annexed territory; or

(B) the owners of more than seventy-five percent (75%) in assessed valuation of the land in the annexed territory.

The remonstrance must be filed within ninety (90) days after the publication of the annexation ordinance under section 7 of this chapter, must be accompanied by a copy of that ordinance, and must state the reason why the annexation should not take place.

(b) On receipt of the remonstrance, the court shall determine whether the remonstrance has the necessary signatures. In determining the total number of landowners of the annexed territory and whether signers of the remonstrance are landowners, the names appearing on the tax duplicate for that territory constitute prima facie evidence of ownership. Only one (1) person having an interest in each single property, as evidenced by the tax duplicate, is considered a landowner for purposes of this section.

(c) If the court determines that the remonstrance is sufficient, it shall fix a time, within sixty (60) days of its determination, for a hearing on

1 the remonstrance. Notice of the proceedings, in the form of a summons,
 2 shall be served on the annexing municipality. The municipality is the
 3 defendant in the cause and shall appear and answer.

4 **(d) If an annexation is initiated by property owners under**
 5 **section 5 of this chapter and the owners of all the property within**
 6 **the territory sought to be annexed petition the municipality for the**
 7 **annexation of the territory, a remonstrance to the annexation may**
 8 **not be filed under this section.**

9 SECTION 12. IC 36-4-3-15.5 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15.5. (a) **Except as**
 11 **provided in subsection (b),** an owner of land within one-half (1/2)
 12 mile of territory proposed to be annexed under this chapter may, ~~within~~
 13 **not later than** sixty (60) days after the publication of the annexation
 14 ordinance, appeal that annexation to a circuit court or superior court of
 15 a county in which the annexed territory is located. The complaint must
 16 state that the reason the annexation should not take place is that the
 17 territory sought to be annexed is not contiguous to the annexing
 18 municipality.

19 **(b) This subsection applies to an annexation initiated by**
 20 **property owners under section 5 of this chapter in which the**
 21 **owners of all the property within the territory sought to be**
 22 **annexed petition the municipality for the annexation of the**
 23 **territory. An owner of land within one-half (1/2) mile of the**
 24 **territory sought to be annexed under this chapter may, not later**
 25 **than thirty (30) days after the publication of the annexation**
 26 **ordinance, appeal that annexation to a circuit court or superior**
 27 **court of a county in which the territory is located. The complaint**
 28 **must state that the reason the annexation should not take place is**
 29 **that the territory sought to be annexed is not contiguous to the**
 30 **annexing municipality.**

31 **(c) Upon the determination of the court that the complaint is**
 32 **sufficient, the judge shall fix a time for a hearing to be held not later**
 33 **than sixty (60) days after the determination. Notice of the proceedings**
 34 **shall be served by summons upon the proper officers of the annexing**
 35 **municipality. The municipality shall become a defendant in the cause**
 36 **and be required to appear and answer. The judge of the circuit or**
 37 **superior court shall, upon the date fixed, proceed to hear and determine**
 38 **the appeal without a jury, and shall, without delay, give judgment upon**
 39 **the question of the annexation according to the evidence introduced by**
 40 **the parties. If the evidence establishes that the territory sought to be**
 41 **annexed is contiguous to the annexing municipality, the court shall**
 42 **deny the appeal and dismiss the proceeding. If the evidence does not**
 43 **establish the foregoing factor, the court shall issue an order to prevent**
 44 **the proposed annexation from taking effect. The laws providing for**
 45 **change of venue from the county do not apply, but changes of venue**
 46 **from the judge may be had. Costs follow judgment. Pending the appeal,**

1 and during the time within which the appeal may be taken, the territory
2 sought to be annexed is not a part of the annexing municipality.

3 ~~(c)~~ **(d)** If the court enters a judgment in favor of the municipality,
4 the annexation may not take effect during the year preceding a year in
5 which a federal decennial census is conducted. An annexation that
6 would otherwise take effect during the year preceding a year in which
7 a federal decennial census is conducted takes effect January 2 of the
8 year in which a federal decennial census is conducted."

9 Renumber all SECTIONS consecutively.

(Reference is to ESB 317 as printed April 9, 2001.)

Representative Fry